

REMARKS

Reconsideration of the application is respectfully requested.

Claims 1, 4, 6-9, 11 and 15-20 are in the application. Claims 15-20 presently stand withdrawn in view of a previous election.

In the Official Action, the Examiner rejected claims 1, 4, 8, 9 and 11 under 35 U.S.C. §103(a) as being allegedly unpatentable over Mussi (EP 0 614 967) in view of Land (U.S. Patent No. 3,630,849), further in view of Weick et al. (U.S. Patent No. 5,908,127), and further in view of Kayal et al. (U.S. Patent No. 5,695,987).

It is respectfully submitted that Weick et al. has been misapplied in the present rejection and, thus, the present rejection should be withdrawn.

As set forth at p. 4 of the Office Action, the Examiner stated: "As evidenced by Weick, the construction of ribs along the base of a bottle to facilitate stacking is known in the art." The Examiner relied on this statement for allegedly supporting disclosure for modifying the Land reference to have ribs formed on the base of a bottle, rather than on a cap. However, Weick et al. is concerned with the strength and integrity of a container, not gas circulation about the base thereof in a stacked configuration. With reference to col. 4, ll. 26-52, Weick et al. discusses difficulties in stacking filled polymeric containers in packaged case form on pallets. The primary concern being that with additional pallets being placed one on top of another, the containers below may not have sufficient integrity to withstand the applied load. This concern is even greater where the containers have been hot-filled, meaning that the containers have been filled with hot juice or other liquid, thereby possibly softening or weakening the containers until the liquid is cooled. To add structural integrity to the containers, Weick et al. provides "oblong convex dimples 52 in combination with a central convex dimple 53 [to] assist in uniformly

distributing stresses and strains, both during a hot-filling and cooling and during storage, transportation, display and use.” (Col. 6, ll. 34-41).

There is absolutely no disclosure or suggestion in Weick et al. of having one container stacked directly atop a second container with the closure of the lower-stacked container being received in the recess of an upper-stacked container. Weick et al. does not show or discuss any closure for the containers. Without specifics of a closure, the recessed portion on the bottom of the Weick et al. containers cannot be designed to receive a closure of a lower stacked container. Moreover, use of the dimples in Weick et al. is completely different from the other applied references, namely, Mussi, Land and Kayal et al. As indicated above, it is the Examiner’s position that in Weick et al., “the construction of ribs along the base of a bottle to facilitate stacking is known in the art.” However, the “stacking” referred to in Weick et al. is different from the stacking referred to in the claims of the subject application, as well as in the other applied prior art. Weick et al. is based on stacking in packaged case form, not one container on top of another container. (See, e.g., col. 4, l. 33, referring to “cases”). It is respectfully submitted that Weick et al. does not disclose stacking one container on top of another, and, thus, Weick et al. is not properly applied to the present rejection.

It is further respectfully submitted that Weick et al. is nonanalogous prior art. Applicant raised this argument in a previous response. As set forth at p. 7 in the Office Action, in response to Applicant’s previous argument, the Examiner stated, “The Mussi, Land and Weick references disclose analogous art because each reference is directed to a stackable receptacle designed to retain a fluid.” It is first noted that for prior art to be determined to be analogous, it must be compared to the claims of the subject application, not to other applied prior art. Thus, Weick et al. must be shown to be analogous to the claims of the subject application, not analogous to Mussi and Land.

The inventor, herein, as set forth in the “Field of the Invention” section of the subject specification, was concerned with providing “a roller bottle having a recessed portion at its bottom end for accommodating an adjacently stacked roller bottle in a manner which allows

gases to enter a gas-permeable cap of the stacked bottles." As discussed at para. [0007] of the application as published, vented caps tend to undesirably seal with roller bottles arranged in a stacked relationship. The sealing prevents gas flow in and out of the roller bottles.

As indicated above, Weick et al. is directed to a load bearing polymeric container. Its use and purpose is completely different and far from the invention of the subject application.

As indicated above, the Examiner asserted that Weick et al. is analogous as being directed to a "stackable receptacle designed to retain a fluid." This is an extremely broad definition of a field of endeavor. By this definition, garbage cans, Tupperware-type containers, and coffee cups with lids are analogous prior art. As indicated by the Board, "[p]recise definition of the problem [confronting an inventor] is important in determining whether a reference is from a nonanalogous art. Defining the problem too narrowly may result in excluding consideration of relevant prior art. Of the same token, defining the problem too broadly, as done here, may result in considering prior art as 'analogous' which is inconsistent with real world considerations." *Ex parte Dussaud*, 7 U.S.P.Q.2d 1818, 1819 (B.P.A.I. 1988) (citation omitted). The present claims are in the field of roller bottle design. With a specific problem of inadvertent sealing of vented caps for cell culture roller bottles, one skilled in the art would not look to Weick et al. For all the reasons stated above, it is respectfully submitted that Weick et al. is not analogous art and can not be properly relied upon in formulating any rejection herein.

For the reasons set forth above, it is respectfully submitted that Weick et al. can not be properly applied to the rejection herein, and thus, the rejection should be properly withdrawn. It is respectfully submitted that claims 1, 4, 8, 9 and 11 are patentable over Mussi, Land, Weick et al. and Kayal et al., each taken alone or in combination.

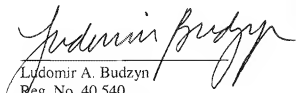
In the Official Action, the Examiner rejected claims 6 and 7 under 35 U.S.C. §103(a) as being allegedly unpatentable over Mussi in view of Land, further in view of Weick et al., further in view of Kayal et al. and further in view of Pedmo (U.S. Patent No. 6,585,123).

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Claims 6 and 7 depend from claim 1. For the reasons set forth above, it is respectfully submitted that Weick et al. should be withdrawn and that claims 6 and 7 are also patentable.

Favorable action is earnestly solicited. If there are any questions or if additional information is required, the Examiner is respectfully requested to contact Applicant's attorney at the number listed below.

Respectfully submitted,



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